

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

95 NOV -6 P12:07

In re:

PACIFIC WOOD TREATING
CORPORATION,

NIEDERMEYER-MARTIN CO.

Debtors.

No. 393-34766-P7
393-34767-P7
(administratively
consolidated)

LODGED _____ REC'D _____
PAID _____ DOCKETED _____

CONSENT DECREE AND SETTLEMENT AGREEMENT

Recitals

1. On August 11, 1993, Pacific Wood Treating Corporation ("Debtor PWT") filed a petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as amended;

2. On August 11, 1993, Niedermeyer-Martin Co. ("Debtor Niedermeyer-Martin") filed a petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as amended;

3. The Debtors' cases were administratively consolidated as chapter 11 cases;

4. On November 15, 1993, the Debtors' chapter 11 cases were converted to cases under Chapter 7 of the Bankruptcy Code;

5. Robert K. Morrow, Inc. has been appointed Trustee for Debtor PWT's estate;

6. Donald Hartvig has been appointed Trustee for Debtor Niedermeyer-Martin's estate;

Pacific Wood Treating 7/16/96

- 2 -

1 7. On or about April 6, 1994, the United States, on
2 behalf of the Environmental Protection Agency ("EPA") and The
3 Department of the Interior ("DOI"), filed Proofs of Claim against
4 both Debtors PWT and Niedermeyer-Martin;

5 8. On or about April 5, 1994, the State of Washington
6 on behalf of The Department of Ecology ("DOE") filed Proofs of
7 Claim against both Debtors PWT and Niedermeyer-Martin;

8 9. On or about December 29, 1993, the Port of
9 Ridgefield filed Proofs of Claim against both Debtors PWT and
10 Niedermeyer-Martin;

11 10. On or about February 4, 1994, the Union Pacific-
12 Omaha Railroad ("Union Pacific") filed a Proof of Claim against
13 Debtor PWT;

14 11. The proofs of claim of the United States, State of
15 Washington, Port of Ridgefield, and Union Pacific relate to
16 alleged obligations and liabilities of Debtors PWT and
17 Niedermeyer-Martin under the Comprehensive Environmental,
18 Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§
19 9601 et seq., Section 7003 of the Resource Conservation and
20 Recovery Act ("RCRA"), 42 U.S.C. § 6973, and the Model Toxics
21 Control Act, chapter 70.105D of the Revised Code of Washington,
22 with respect to releases of hazardous substances or wastes at or
23 near a facility formerly operated by PWT and/or Niedermeyer-
24 Martin in Ridgefield, Washington (the "Pacific Wood Treating
25 Facility" or "Facility") and any migration of hazardous
26 substances or wastes from the Facility;

27 12. On or about September 21, 1991, EPA issued an
28 Administrative Order to Debtor PWT pursuant to RCRA that required

- 3 -

1 the Debtor to perform various investigative activities and to
2 implement final corrective measures with respect to the Pacific
3 Wood Treating Facility;

4 13. The State of Washington contends that Debtors PWT
5 and Niedermeyer-Martin are potentially liable persons under
6 chapter 70.105D.020(8) of the Revised Code of Washington;

7 14. The United States' and State of Washington's
8 proofs of claim also relate to damages for injury to natural
9 resources under the trusteeship of DOI and DOE resulting from a
10 release of hazardous substances at or from the Pacific Wood
11 Treating Facility and the costs of assessment thereof;

12 15. The United States and the State of Washington
13 contend in their proofs of claim that the cost of investigatory
14 and cleanup obligations and natural resource damages and
15 assessment costs for the Pacific Wood Treating Facility may
16 exceed in total \$33.6 million;

17 16. The Trustees for Debtors PWT and Niedermeyer-
18 Martin would dispute that the cost of investigatory and cleanup
19 obligations and natural resource damages and assessment costs
20 exceeds or approximates \$33.6 million and the Trustee for Debtor
21 Niedermeyer-Martin would dispute that it has any liability to any
22 of the claimants for any of the proofs of claim;

23 17. The United States and the State of Washington
24 assert a right of chapter 11 or chapter 7 administrative priority
25 under the Bankruptcy Code and further contend that the Debtors'
26 estates have priority injunctive obligations that must be
27 complied with;
28

- 4 -

1 18. The Trustees for Debtors PWT and Niedermeyer-
2 Martin contend that neither the United States nor the State of
3 Washington are entitled to an administrative or other priority
4 claim in either the chapter 11 or chapter 7 cases;

5 19. Debtor PWT's Board of Directors passed a
6 resolution at a meeting on September 10, 1991 to set up a sinking
7 fund (the "Sinking Fund");

8 20. The United States contends that the Sinking Fund
9 was set up for the sole purpose of providing the necessary
10 funding to carry out the work required by the 1991 EPA
11 Administrative Order as it pertains to drip pad requirements and
12 as may be otherwise required by EPA, including the cleanup of
13 associated contaminated soils surrounding the drip pad area; that
14 the Sinking Fund was created by Debtor PWT in order to allow it
15 to continue to operate the Ridgefield Facility, which resulted in
16 substantial additional contamination and releases at the Pacific
17 Wood Treating Facility; and that the creation of the Sinking Fund
18 created a constructive or equitable trust (or other form of
19 trust) governing the use of the fund and that the funds deposited
20 in the Sinking Fund are not an asset of the Debtor PWT's
21 bankruptcy estate available to general creditors, and may only be
22 used in accordance with the purpose for which they were set aside
23 as directed by EPA;

24 21. The Trustee for Debtor PWT contends that the
25 Sinking Fund was established by Debtor PWT for the sole purpose
26 of purchasing a new drip pad required by the 1991 EPA
27 Administrative Order and for no other purpose; that operation
28 after the effective date of the 1991 EPA Administrative Order did

- 5 -

1 not result in substantial additional contamination and releases
2 at the Pacific Wood Treating Facility; and that the money in the
3 Sinking Fund is property of the estate which is not subject to a
4 constructive or equitable trust, or any other form of trust in
5 which the EPA is a beneficiary;

6 22. On or about April 1994, the Bankruptcy Court
7 authorized the Trustee for Debtor PWT to transfer the Sinking
8 Fund into an investment authorized by the Bankruptcy Code, but
9 without prejudice to the contentions and rights of the United
10 States to any proceeds thereof;

11 23. As of April 28, 1995, the proceeds from the
12 Sinking Fund, including any interest accumulated thereon, total
13 approximately \$190,000;

14 24. The Trustee for Debtor PWT has asserted a claim to
15 life insurance proceeds against the bankruptcy estate of Debtor
16 Niedermeyer-Martin, based in part upon the alleged use of Debtor
17 PWT's funds to purchase "key man" life insurance policies on the
18 life of Edward Niedermeyer;

19 25. The Trustee for Debtor PWT filed a motion for
20 substantive consolidation of the bankruptcy estates of Debtor PWT
21 and Niedermeyer-Martin;

22 26. The Trustee for Debtor Niedermeyer-Martin opposed
23 the motion for substantive consolidation and would oppose the
24 claim by the Trustee for Debtor PWT for life insurance proceeds;

25 27. In the absence of this Consent Decree and
26 Settlement Agreement, the Trustees would dispute and object to
27 the claims and contentions of the United States, the State of
28 Washington, the Port of Ridgefield, and Union Pacific;

- 6 -

1 28. Upon being appointed Trustee, the Trustee for
2 Debtor PWT at all times continued steps already commenced to sell
3 all operating assets and inventory and certain real property of
4 the Debtor at the Pacific Wood Treating Facility;

5 29. The Court approved the sale of such operating
6 assets and inventory and real property to the Port of Ridgefield;

7 30. The Trustees for the Debtors contend that during
8 the short time between their appointment and the sale of the
9 operating assets and inventory and real property, they did not
10 operate the Pacific Wood Treating Facility and took no actions
11 that had any effect on hazardous substances or wastes allegedly
12 released at or near the Facility or that migrated therefrom;

13 31. The Trustees, the United States, Washington, Port
14 of Ridgefield, and Union Pacific desire, without admission of
15 liability by any party, to settle, compromise and resolve the
16 proofs of claim and contentions of the United States, Washington,
17 Port of Ridgefield, and Union Pacific in accordance with the
18 terms of this Consent Decree and Settlement Agreement
19 ("Settlement Agreement");

20
21 Consent Decree and Settlement Agreement

22 NOW, THEREFORE, in consideration of the mutual promises
23 contained herein, and for other good and valuable consideration
24 receipt of which is hereby acknowledged;

25 IT IS HEREBY STIPULATED and agreed to by and between the
26 parties hereto, subject to approval by the Bankruptcy Court and
27 the provisions of paragraph 20, as follows:
28

- 7 -

1 1. Within thirty (30) days of the receipt of any life
2 insurance proceeds on the life of Edward Niedermeyer, the Trustee
3 for Debtor Niedermeyer-Martin shall pay the Trustee for Debtor
4 PWT 30% of the life insurance proceeds up to a total amount not
5 to exceed \$900,000.

6 2. The Trustee for Debtor PWT withdraws with prejudice
7 his motion for substantive consolidation and any additional claim
8 to life insurance proceeds on the life of Edward Niedermeyer.

9 3. The United States and the State of Washington
10 withdraw with prejudice their claims against Debtors PWT and
11 Niedermeyer-Martin for chapter 7 or chapter 11 administrative
12 priority.

13 4. The Trustee for Debtor PWT withdraws with prejudice
14 his objection to the United States' claim as a constructive or
15 other trust to the approximately \$190,000 plus accumulated
16 interest in the proceeds from the Sinking Fund. The Trustee for
17 Debtor PWT shall pay the United States on behalf of EPA \$190,000
18 within fifteen (15) days of the approval of this Settlement
19 Agreement.

20 5. In addition to the payment required by paragraph 4,
21 the United States on behalf of EPA shall have an allowed general
22 unsecured claim against the estate of Debtor PWT of the kind
23 specified in 11 U.S.C. § 726(a)(2) ("Allowed General Unsecured
24 Claims"), which shall be paid by the Trustee for Debtor PWT in
25 the following amount: 55% of the net proceeds in the PWT
26 bankruptcy estate (including, without limitation, any amounts
27 received pursuant to paragraph 1) after the Trustee has paid all
28 allowed administrative claims or claims with a higher priority

- 8 -

1 than Allowed General Unsecured Claims. The United States on
2 behalf of DOI shall have an Allowed General Unsecured Claim
3 against the estate of Debtor PWT, which shall be paid by the
4 Trustee for Debtor PWT in the following amount: 5% of the net
5 proceeds in the PWT bankruptcy estate (including, without
6 limitation, any amounts received pursuant to paragraph 1) after
7 the Trustee has paid all allowed administrative claims or claims
8 with a higher priority than Allowed General Unsecured Claims.

9 6. The United States on behalf of EPA shall have an
10 Allowed General Unsecured Claim against the estate of Debtor
11 Niedermeyer-Martin, which shall be paid by the Trustee for Debtor
12 Niedermeyer-Martin in the following amount: 40% of the net
13 proceeds in the Niedermeyer-Martin bankruptcy estate after the
14 Trustee has paid all allowed administrative claims or claims with
15 a higher priority than Allowed General Unsecured Claims. The
16 United States on behalf of DOI shall have an Allowed General
17 Unsecured Claim against the estate of Debtor Niedermeyer-Martin,
18 which shall be paid by the Trustee for Debtor Niedermeyer-Martin
19 in the following amount: 5% of the net proceeds in the
20 Niedermeyer-Martin bankruptcy estate after the Trustee has paid
21 all allowed administrative claims or claims with a higher
22 priority than Allowed General Unsecured Claims. In the event
23 that the payments required by this paragraph have been made and
24 holders of other Allowed General Unsecured Claims against Debtor
25 Niedermeyer-Martin have been paid 65% of the allowed amount of
26 their claims and the estate still has additional funds, the
27 Trustee shall pay the additional funds pro rata to the United
28 States on behalf of EPA and DOI and the other holders of Allowed

- 9 -

1 General Unsecured Claims (but not to exceed the amount of their
2 allowed claims), with the amounts of the United States' allowed
3 claims for purposes of such supplemental distribution to be \$3.0
4 million for the United States on behalf of EPA and \$1.0 million
5 for the United States on behalf of DOI.

6 7. The Trustees for Debtors PWT and Niedermeyer will
7 make the payments required by paragraphs 5 and 6 at the same time
8 as they make payments to their other creditors holding Allowed
9 General Unsecured Claims. The United States' Allowed General
10 Unsecured Claims under paragraphs 5 and 6 shall not be
11 subordinated to other Allowed General Unsecured Claims. The
12 amount of the actual payments received on account of this
13 Settlement Agreement (and only that amount) shall be credited by
14 EPA to the Pacific Wood Treating Facility account and the
15 liability of other liable parties shall be reduced by the amount
16 of actual payment and only that amount. The amount of the actual
17 payments received on account of this Settlement Agreement (and
18 only that amount) shall be credited by DOI to the Pacific Wood
19 Treating Facility account and the liability of other liable
20 parties shall be reduced by the amount of actual payment and only
21 that amount.

22 8. Payments to the United States on behalf of EPA
23 under this Settlement Agreement shall be used by EPA, after
24 consultation with DOE, to implement response action pursuant to
25 CERCLA with respect to hazardous substances or wastes released at
26 or near the Pacific Wood Treating Facility or any migration of
27 hazardous substances or wastes from the Facility (including to
28 property owned by Union Pacific) or, by DOE, pursuant to a

- 10 -

1 cooperative agreement with EPA, to implement response action
2 pursuant to the Model Toxics Control Act, chapter 70.105D of the
3 Revised Code of Washington, with respect to hazardous substances
4 or wastes released at or near the Pacific Wood Treating Facility
5 or any migration of hazardous substances or wastes from the
6 Facility (including to property owned by Union Pacific).
7 Payments to the United States on behalf of EPA shall be made by
8 check payable to the EPA Hazardous Substances Superfund and
9 mailed to U.S. EPA, Superfund Accounting, P.O. Box 360903M,
10 Pittsburgh, Pennsylvania 15251. Reference shall be made on the
11 check and accompanying transmittal letter to the Pacific Wood
12 Treating Site. Payments under this Settlement Agreement to the
13 United States on behalf of DOI shall be used by DOI to restore,
14 replace, acquire natural resources or assess natural resource
15 damages at or near the Pacific Wood Treating Facility or relating
16 to any migration of hazardous substances or wastes from the
17 Facility (including to property owned by Union Pacific).
18 Payments to the United States on behalf of DOI shall be made by
19 check payable to the U.S. Department of Interior, Fish & Wildlife
20 Service and mailed to Michael Hurst, Chief, Division of Fiscal
21 Services, Department of Interior, Office of Secretary, Mail Stop
22 5257, 1849 C Street, N.W., Washington, D.C. 20240. The check
23 should clearly reference "Pacific Wood Treating Natural Resource
24 Settlement."

25 9. The Trustee for Debtor PWT shall pay Union Pacific
26 \$10,000 within fifteen (15) days of the approval of this
27 Settlement Agreement. Such payment shall be sent by check
28

- 11 -

1 payable to Union Pacific c/o Nancy Roberts, 1416 Dodge St.,
2 Omaha, NE 68179.

3 10. The Trustees for PWT and Niedermeyer-Martin shall
4 assign to the Port of Ridgefield all of the Debtors' estates'
5 rights in any policies of insurance that might provide any
6 insurance coverage for any claims with respect to hazardous
7 substances or wastes released at or near the Pacific Wood
8 Treating Facility or any migration of hazardous substances or
9 wastes from the Facility. The Port of Ridgefield shall use any
10 proceeds that it receives on account of the assigned insurance
11 policies, after consultation with EPA and DOE, to implement
12 response action with respect to hazardous substances or wastes
13 released at or near the Pacific Wood Treating Facility or any
14 migration of hazardous substances or wastes from the Facility.
15 Nothing in this paragraph shall apply to any rights of the
16 Debtors' estates in life insurance policies.

17 11. The proofs of claim of the United States on behalf
18 of EPA and DOI, State of Washington, Port of Ridgefield, and
19 Union Pacific filed against Debtors Pacific Wood and Niedermeyer-
20 Martin are settled and satisfied in full by the terms of this
21 Settlement Agreement.

22 12. Except as provided in paragraph 13, the United
23 States, State of Washington, Port of Ridgefield, and Union
24 Pacific covenant not to file a civil action or take civil
25 administrative action against the Debtors PWT and Niedermeyer-
26 Martin, the Debtors' estates, the Trustees for the Debtors, or
27 the Trustees' employees or attorneys pursuant to Sections 106,
28 107, or 113 of CERCLA or Sections 7002 or 7003 of RCRA with

- 12 -

1 respect to hazardous substances or wastes released at or near the
2 Pacific Wood Treating Facility or any migration of hazardous
3 substances or wastes from the Facility (including to property
4 owned by Union Pacific). The above covenant not to sue the
5 Trustees' employees is limited to alleged liability arising in
6 their alleged capacity as employees of the Trustees and does not
7 extend to any independent liability that they might have. Except
8 as provided in paragraph 13, the State of Washington, Port of
9 Ridgefield, and Union Pacific covenant not to file a civil action
10 or take civil administrative actions against the Debtors PWT and
11 Niedermeyer-Martin and the Debtors' estates pursuant to Sections
12 70.105D.030, .040, and .050 of the Model Toxics Control Act of
13 the Revised Code of Washington or Chapter 70.105 of the Revised
14 Code of Washington or common law with respect to hazardous
15 substances or wastes released at or near the Pacific Wood
16 Treating Facility or any migration of hazardous substances or
17 wastes from the Facility (including to property owned by Union
18 Pacific).

19 13. The covenants not to sue in paragraph 12 shall not
20 apply to nor affect any action to enforce the provisions of this
21 Settlement Agreement. If either Debtor PWT or Niedermeyer-Martin
22 or their estates resume active business operations in the future,
23 paragraph 12's covenants not to sue shall not apply to any
24 liability of the Debtor resuming operations that arises from
25 conditions at the Pacific Wood Treating Facility that were
26 unknown to the covenantor at the time of entering into this
27 Settlement Agreement. Nothing in this Settlement Agreement shall
28 be deemed to limit the authority of the United States or the

- 13 -

1 State of Washington to either take response action themselves, or
2 to order parties other than Debtor PWT, Debtor Niedermeyer-Martin
3 Co. or the Trustees to take such response action, with respect to
4 the Pacific Wood Treating Facility under Section 104 of CERCLA,
5 42 U.S.C. § 9604 or Sections 70.105D.030, .050 of the Model
6 Toxics Control Act of the Revised Code of Washington or any other
7 applicable state or federal law, regulation, or rule, or to alter
8 the applicable legal principles governing judicial review of any
9 action taken by the United States or the State of Washington
10 pursuant to that authority. Nothing in this Settlement Agreement
11 shall be deemed to limit the future information gathering
12 authority of the United States or the State of Washington under
13 Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or
14 any other applicable state or federal law, regulation, or rule.

15 14. With regard to claims for contribution regarding
16 matters addressed in this Settlement Agreement, the Debtors, the
17 Debtors' estates, and the Trustees are entitled to such
18 protection from contribution actions or claims as is provided by
19 Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), Section
20 70.105D.040(4) of the Model Toxics Control Act of the Revised
21 Code of Washington or other applicable statute. "Matters
22 addressed" in this Settlement Agreement shall mean all response
23 costs incurred or to be incurred directly or indirectly by the
24 United States, the State of Washington, the Port of Ridgefield,
25 Union Pacific, or any party with respect to hazardous substances
26 or wastes released at or near the Pacific Wood Treating Facility
27 or any migration of hazardous substances or wastes from the
28 Facility (including to property owned by Union Pacific).

- 14 -

1 15. The Court finds that the Trustees for the Debtors
2 and the Trustees' employees or attorneys are not liable to the
3 State of Washington, Port of Ridgefield, or Union Pacific
4 pursuant to Sections 70.105D.030, .040, and .050 of the Model
5 Toxics Control Act of the Revised Code of Washington or Chapter
6 70.105 of the Revised Code of Washington or common law, with
7 respect to hazardous substances or wastes released at or near the
8 Pacific Wood Treating Facility or any migration of hazardous
9 substances or wastes from the Facility (including to property
10 owned by Union Pacific). The Court's finding above with respect
11 to the Trustees' employees is limited to alleged liability
12 arising in their alleged capacity as employees of the Trustees
13 and does not extend to any independent liability that they might
14 have.

15 16. The Trustees for Debtors PWT and Niedermeyer-
16 Martin and the Debtors' estates agree not to seek any direct or
17 indirect claim for reimbursement from the Hazardous Substance
18 Superfund, the State Toxics Control Account, or any local Toxics
19 Control Account, any claims for contribution against the United
20 States or the State of Washington, their departments, agencies or
21 instrumentalities, and any claims arising out of response
22 activities at the Pacific Wood Treating Facility or with respect
23 to hazardous substances or wastes released at or near the Pacific
24 Wood Treating Facility or any migration of hazardous substances
25 or wastes from the Facility (including to property owned by Union
26 Pacific). Nothing in this Settlement Agreement shall be
27 construed to constitute preauthorization of a claim within the
28 meaning of Sections 111, 106, 112, and 113 of CERCLA, 42 U.S.C.

- 15 -

1 §§ 9611, 9606, 9612, 9613, or 40 C.F.R. § 300.700(d). The
2 Trustees for Debtors PWT and Niedermeyer-Martin and the Debtors'
3 estates covenant not to sue the Port of Ridgefield and Union
4 Pacific pursuant to Sections 106, 107, or 113 of CERCLA, Section
5 7002 or 7003 of RCRA, Sections 70.105D.030, .040, and .050 of the
6 Model Toxics Control Act of the Revised Code of Washington,
7 Chapter 70.105 of the Revised Code of Washington or common law
8 with respect to hazardous substances or wastes released at or
9 near the Pacific Wood Treating Facility or any migration of
10 hazardous substances or wastes from the Facility (including to
11 property owned by Union Pacific).

12 17. Nothing in this Settlement Agreement shall be
13 construed to create any rights in, or grant any cause of action
14 to, any person not a party to this Settlement Agreement that is
15 not a person or entity receiving a covenant not to sue under
16 paragraph 12. The United States and State of Washington
17 specifically reserve all of their rights against the Port of
18 Ridgefield and Union Pacific and any persons or entities that are
19 not parties to this Settlement Agreement or persons or entities
20 receiving a covenant not to sue under paragraph 12.

21 18. Until such time as their estate is closed, the
22 Trustees for Debtors PWT and Niedermeyer-Martin agree to provide
23 EPA, DOE, the Port of Ridgefield, and Union Pacific, upon
24 request, access and an opportunity to copy all documents and
25 information within their possession or control or that of their
26 contractors and agents relating to activities at the Pacific Wood
27 Treating Facility, including, but not limited to, sampling,
28 analysis, chain of custody records, manifests, trucking logs,

- 16 -

1 receipts, reports, sample traffic routing, correspondence, or
2 other documents or information relating to the Pacific Wood
3 Treating Facility, or the liability of any person other than PWT
4 or Niedermeyer-Martin for response actions conducted or to be
5 conducted at the Facility. The Trustees for Debtors PWT and
6 Niedermeyer-Martin agree to provide EPA, DOE, the Port of
7 Ridgefield, and Union Pacific at least forty-five (45) days
8 advance written notice prior to the proposed destruction of any
9 records and documents that relate in any manner to environmental
10 conditions at the Pacific Wood Treating Facility or the liability
11 of any person other than PWT or Niedermeyer-Martin for response
12 actions conducted or to be conducted at the Facility. The
13 Trustees shall turn such documents over to EPA, DOE, the Port of
14 Ridgefield, or Union Pacific if requested by them during the
15 forty-five day waiting period unless the Court directs that they
16 be turned over to some other entity.

17 19. Copies of all payments or correspondence shall be
18 sent to:

19 Chief, Environmental Enforcement Section
20 Re: DOJ #90-7-1-743
21 Environment and Natural Resources Division
22 U.S. Department of Justice
23 P.O. Box 7611, Ben Franklin Station
24 Washington, D.C. 20044

25 Branch Chief
26 Superfund Response and Investigation Branch
27 U.S. EPA, Region X
28 1200 Sixth Avenue
Seattle, WA 98101

Tom Morrill
Attorney General's Office
State of Washington
P.O. Box 40117
Olympia, WA 98504-0117

- 17 -

Mary Beth Hayes
Site Manager
Southwest Regional Office
Department of Ecology
Olympia, WA 98504-7775

Port of Ridgefield
Attn: Port Manager
P.O. Box 55
Ridgefield, WA 98642

Union Pacific Railroad Co.
1416 Dodge St.
Omaha, NE 68179

20. This Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. This Settlement Agreement will also be lodged with the Bankruptcy Court and submitted for public comment following notice of the Settlement Agreement in the Federal Register by the United States. The State of Washington will also submit the Settlement Agreement for public comment pursuant to the Model Toxics Control Act, chapter 70.105D of the Revised Code of Washington. The United States and the State of Washington reserve the right to withdraw or withhold their consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, or inadequate. If the United States and the State of Washington do not withdraw or withhold their consent, they will file a motion for approval and entry of the Settlement Agreement which includes their response to any public comments received.


21. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be

- 18 -

1 deemed an admission of any fact or waiver of any right of either
2 party with respect to the matters contained herein.


3 22. This Settlement Agreement may not be amended,
4 modified or supplemented, in whole or in part, without the prior
5 written consent of the parties hereto and the approval of the
6 Bankruptcy Court.

7 23. This Settlement Agreement may be executed in
8 counterparts each of which shall constitute an original and all
9 of which shall constitute one and the same agreement.

10 
11 LOIS J. SCHIFFER
12 Assistant Attorney General
13 Environment and Natural Resources
14 Division

15 KRISTINE OLSON ROGERS
16 United States Attorney
17 District of Oregon

18 HERB SUNDBY
19 Assistant United States Attorney
20 888 S.W. 5th Ave.
21 Suite 1000
22 Portland, Oregon 97204-2024
23 (503) 727-1000

24 
25 ALAN S. TENENBAUM
26 Environmental Enforcement Section
27 Environment and Natural Resources
28 Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 514-5409

- 19 -



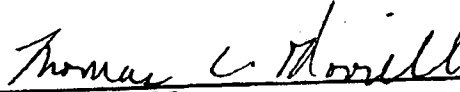
CHUCK CLARKE
Regional Administrator
U.S. EPA, Region X



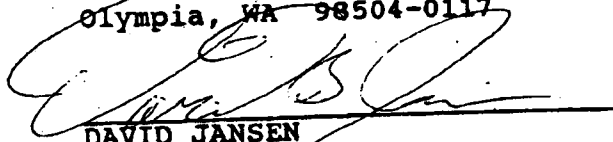
DEAN B. INGEMANSEN
Assistant Regional Counsel
U.S. Environmental Protection
Agency - Region X
1200 Sixth Avenue
Seattle, Washington 98101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 20 -



TOM MORRILL
Assistant Attorney General
State of Washington
P.O. Box 40117
Olympia, WA 98504-0117



DAVID JANSEN
Director of Toxics Cleanup Program
Southwest Regional Office
Department of Ecology
Olympia, WA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 21 -
*ROBERT K. MORROW INC TRUSTEE FOR
PACIFIC WOOD TREATING*
[Signature]
ROBERT K. MORROW

AGREED AS TO FORM

[Signature]
STEPHEN WERTS
Preston, Thorgrimson, et al.
3200 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3688

For Trustee Robert K. Morrow, Inc.

DONALD HARTVIG

JOHN H. DURKHEIMER
Lane Powell Spears & Lubersky
520 S.W. Yamhill Street, #800
Portland, OR 97204-1383

For Trustee Donald Hartvig

WILLIAM ROMPA
Port of Ridgefield
P.O. Box 55
Ridgefield, WA 98642

Union Pacific Railroad Co.
1416 Dodge St.
Omaha, NE 68179

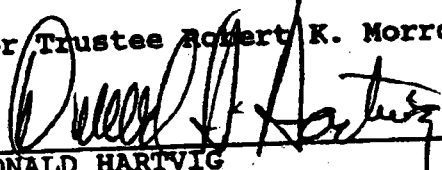
- 21 -

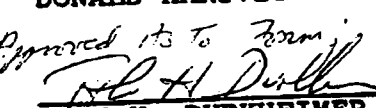
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROBERT K. MORROW

STEPHEN WERTS
Preston, Thorgrimson, et al.
3200 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3688

For Trustee Robert K. Morrow, Inc.


DONALD HARTVIG

Approved to sign

JOHN H. DURKHEIMER
Lane Powell Spears & Lubersky
520 S.W. Yamhill Street, #800
Portland, OR 97204-1383

For Trustee Donald Hartvig

WILLIAM ROMPA
Port of Ridgefield
P.O. Box 55
Ridgefield, WA 98642

Union Pacific Railroad Co.
1416 Dodge St.
Omaha, NE 68179

- 21 -

ROBERT K. MORROW

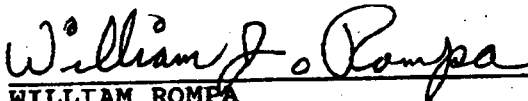
STEPHEN WERTS
Preston, Thorgrimson, et al.
3200 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3688

For Trustee Robert K. Morrow, Inc.

DONALD HARTVIG

JOHN H. DURKHEIMER
Lane Powell Spears & Lubersky
520 S.W. Yamhill Street, #800
Portland, OR 97204-1383

For Trustee Donald Hartvig



WILLIAM ROMPA
Port of Ridgefield
P.O. Box 55
Ridgefield, WA 98642

Union Pacific Railroad Co.
1416 Dodge St.
Omaha, NE 68179

- 21 -

ROBERT K. MORROW

STEPHEN WERTS
Preston, Thorgrimson, et al.
3200 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3688

For Trustee Robert K. Morrow, Inc.

DONALD HARTVIG

JOHN H. DURKHEIMER
Lane Powell Spears & Lubersky
520 S.W. Yamhill Street, #800
Portland, OR 97204-1383

For Trustee Donald Hartvig

WILLIAM ROMPA
Port of Ridgefield
P.O. Box 55
Ridgefield, WA 98642

James V. Dolan
James V. Dolan, Vice President-Law
Union Pacific Railroad Co.
1416 Dodge St.
Omaha, NE 68179

08/16/96 FRI 09:00 FAX 503 248 9085

PRESTON, LAW FIRM

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

JUL 19 1996

LODGED _____ REC'D _____
PAID _____ DOCKETED _____

0-422

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:

PACIFIC WOOD TREATING
CORPORATION,

Debtor.

No. 393-34766-elp7

No. 393-34767-elp7

ORDER APPROVING SETTLEMENT OF
ENVIRONMENTAL CLAIMS FILED
AGAINST ESTATES

In Re:

NIEDERMEYER-MARTIN CO.,

Debtor.

This matter came before the Court upon the Motion of Robert K. Morrow, Inc., the Chapter 7 Trustee in the Pacific Wood Treating Corporation ("PWT") case and Donald H. Hartvig, the Chapter 7 Trustee in the Niedermeyer-Martin Co. ("N-M") case for an order authorizing the Trustees to settle and compromise the claims filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") and the Department of Interior ("DOI"), State of Washington, Port of Ridgefield and Union Pacific Railroad Co. (collectively "Environmental Claimants") against the PWT and N-M estates. The Court finds that notice was mailed on June 18, 1996 to those parties entitled to notice pursuant to FRBP 2002(a) and that no objections to the Motion were received by the Clerk or the Trustee. Now, therefore, it is hereby

ORDERED that the settlement is approved pursuant to the terms as stated in the Motion.

Elizabeth L. Perris
Elizabeth L. Perris
United States Bankruptcy Judge

Page 1 -

ORDER APPROVING SETTLEMENT OF
ENVIRONMENTAL CLAIMS

J:\SWA\32330-00\001\AP2PK.DOC

PRESTON GATES & ELLIS
3200 U.S. BANK OF TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OR 97204-3688
TELEPHONE (503) 228-3280

438

08/16/96 FRI 09:01 FAX 503 248 9085

PRESTON LAW FIRM

1 Presented by:

2 PRESTON GATES & ELLIS

3
4 By Stephen Werts
5 Stephen Werts, OSB #74337
6 Attorneys for Trustee
7 Robert K. Morrow, Inc.

8 LANE POWELL SPEARS LUBERSKY

9 By John H. Durkheimer
10 John H. Durkheimer, OSB #79034
11 Attorneys for Trustee
12 Donald H. Hartvig13 cc Stephen Werts
14 John Durkheimer
15 Robert Morrow
16 Donald Hartvig
17 US Trustee
18
19
20
21
22
23
24
25
26

Page 2 -

ORDER APPROVING SETTLEMENT OF
ENVIRONMENTAL CLAIMS

J:\JWS\32330-00.001\WP2PK.DOC

PRESTON GATES & ELLIS
3200 U.S. BANKCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OR 97204-3688
TELEPHONE: (503) 278-1200